

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH,
PENNSYLVANIA and AMERICAN HOME
ASSURANCE COMPANY,

Plaintiffs,

v.

ELECTRIC TRANSIT INCORPORATED
SKODA, a.s. SKODA OSTROV, s.r.o., AAI
CORPORATION and CZECH EXPORT BANK,

Defendants.

No. C 04-3435 JSW (MEJ)

**ORDER RE: AAI CORPORATION'S
REQUEST TO COMPEL PRODUCTION
OF CRITICAL EMAILS**

AAI CORPORATION,

Counterclaim Plaintiff,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH,
PENNSYLVANIA and AMERICAN HOME
ASSURANCE COMPANY,

Counterclaim Defendants.

AAI CORPORATION,

Third-Party Plaintiff,

v.

AMERICAN INTERNATIONAL GROUP,
INC.,

Third-Party Defendant.

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1 This case arises out of an insurance contract related to a construction project involving the
2 above named defendants and San Francisco Municipal Railway ("MUNI"). Defendant AAI
3 Corporation ("AAI") joined third-party defendant American International Group, Inc. ("AIG") to
4 resolve an issue of indemnity. AAI and AIG are now before this Court regarding an outstanding
5 discovery dispute whereby AIG has denied AAI's request to produce certain emails and back-up
6 tapes containing email correspondence that AAI believes are relevant to support its claims. On April
7 5, 2006, the parties submitted a joint meet-and-confer letter and requested a telephonic discovery
8 conference with this Court to resolve the issue.

9 AAI seeks in its joint meet-and-confer letter an order pursuant to Federal Rule of Civil
10 Procedure 37(a) compelling AIG to: (1) immediately produce emails and other electronic documents
11 of six AIG employees who worked in AIG offices in Europe; and (2) permit AAI's technology
12 expert, Samuel ("Sandy") Goldstein, to retrieve responsive emails from certain AIG archived tapes,
13 pursuant to an email retrieval protocol Mr. Goldstein has prepared, with AIG paying the costs of Mr.
14 Goldstein's work. *See* Joint Meet-and-Confer Letter ("JMCL") dated April 5, 2006, p. 1.

15 Regarding its first request, AAI argues that AIG has repeatedly assured AAI that it will
16 produce to AAI the emails and other electronic documents of the six AIG employees in Europe, but
17 has failed to do so. JMCL at 2. AAI further asserts that AIG's failure to produce these emails has
18 prevented AAI from commencing deposition discovery. *Id.*

19 Regarding its second request, AAI argues that AIG has discovered 1,303 archived backup
20 tapes that may contain responsive emails of importance but refuses to review the contents of these
21 tapes, much less produce them. *Id.* AAI asserts that its outside expert, Mr. Goldstein, can efficiently
22 conduct a review of the tapes using a precise, straightforward process he has identified and set forth
23 in a protocol. *Id.* AAI argues that the tapes are relevant to AIG's assertion that AAI is a joint
24 venturer with ETI and not a proper bond claimant. *Id.* Specifically, AAI argues it is imperative that
25 AAI obtain internal AIG emails to determine exactly what AIG knew of the AAI-ETI relationship,
26 since such information bears directly on its fraud claims and is likely to be probative of AIG's intent.
27 JMCL at 2-3.

1 In response to AAI's first request, AIG asserts that it has acquired and will produce for AAI
2 by the date of the submitted joint meet-and-confer letter (April 5, 2006) all of the relevant accessible
3 electronic data available, which includes a revised list of 15 domestic employees and three
4 employees located overseas. JMCL at 4.

5 In response to AAI's second request, AIG argues that AAI's demands for the backup tapes are
6 nothing less than an effort to turn this case into a "meaningless discovery dispute" while avoiding the
7 substantive issues pertaining to the case. *Id.* Specifically, AIG argues that there is little probability,
8 in any, that any relevant data exists on the tapes which was not already included in AIG's hard copy
9 production of all non-privileged documents retrieved from AIG files. *Id.* In addition, AIG argues
10 that Mr. Goldstein's proposed protocol for reviewing the tapes requires the use of very expensive
11 equipment which AIG uses in its daily operations and therefore, allowing Mr. Goldstein to review
12 the tapes will be disruptive to AIG's business. JMCL at 5. Further, AIG argues the tapes would have
13 to be copied, sorted, restored, indexed, searched, and reviewed at an estimated cost in excess of
14 \$2,000,000; costs which far outweigh the lack of any probative value likely to be obtained. *Id.* As a
15 final matter, AIG argues pursuant to relevant case law that it is not required to search the tapes and,
16 as such, if the Court should allow Mr. Goldstein to search the tapes, the burden and costs must be
17 shifted to AAI. *Id.*

18 Before the Court can decide the merits of each argument related to the requested emails and
19 backup tapes containing email correspondence, it needs more information. Accordingly, the Court
20 ORDERS the following:


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22 1) AAI must provide to the Court by June 15, 2006, at 10:00AM, a declaration from its
23 expert, Sandy Goldstein, setting forth Mr. Goldstein's most accurate assessment of
24 how much time it would take him to retrieve the requested information from the
25 backup tapes and how much the retrieval will cost financially; and
26
- 27 2) AIG must provide to the Court by June 15, 2006, at 10:00AM, a declaration stating
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1 why and how it would disrupt AIG's daily business operations to allow Mr. Goldstein
2 to retrieve the information contained on the backup tapes.

3 **IT IS SO ORDERED.**

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5 Dated:

6 6/1/06

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MARIA ELENA JAMES
United States Magistrate Judge